

# News Release



U.S. Department of Labor  
Office of Public Affairs  
Dallas, Texas  
Release No.03-835-DAL

For Immediate Release  
Dec. 3, 2003  
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## **Labor Department Sues Owners of Houston Healthcare Facility For Misuse of Plan Assets**

**HOUSTON**—The owner of bankrupt Continuum Healthcare Systems, Inc., of Houston was sued by the U. S. Department of Labor for failure to remit contributions owed to the company's group health and 401(k) plans and to properly manage the plans. Losses to both the health and pension plans are in excess of \$25,000.

Steven Eischen, director of the Dallas regional office of the Employee Benefits Security Administration that investigated the case, said, "Plan officials have a duty to properly manage and protect employee benefit plans and the assets. Our lawsuit is designed to restore assets that were not properly protected for the company's employees."

The Labor Department suit, filed on Nov. 25 in federal district court in Houston, alleges that Don R. Johnson violated the Employee Retirement Income Security Act (ERISA). Johnson is a majority owner of the company and trustee of the 401(k) plan. The suit states that he allegedly failed to remit contributions owed to the health and 401(k) plans, did not separate plan assets from assets of the company, used plan assets to benefit a party related to the plan, and failed to properly administer the plans.

The department is seeking to require that Johnson restore all losses to the plans plus interest, be removed from his position with the plans, and be permanently barred from serving as a fiduciary to any plan governed by ERISA. The suit also asks the court to appoint an independent fiduciary to manage the plans.

Continuum Healthcare Systems, Inc.—was placed in Chapter 7 bankruptcy on Aug. 22, 2002. The health plan covered all full-time employees. As of April 8, 2002, the company's 401(k) plan covered 26 employees and had \$23.583 in assets.

Employers with similar problems, who are not yet the subject of an investigation by EBSA, may be eligible to participate in the department's Voluntary Fiduciary Correction Program (VFCP). Participation in the VFCP requires employers to make workers whole but allows them to avoid EBSA enforcement actions, civil penalties and any applicable excise taxes. For more information see [www.dol.gov/ebsa](http://www.dol.gov/ebsa).

Employers and workers can reach the Dallas regional office at (214) 767-6831 or EBSA's toll free number, **1-866-444-EBSA (3272)**, for help with problems relating to private-sector pension and health plans.

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(Chao v. Johnson)